

disputing it or requesting verification as provided in § 1692g.² Defendants directly argue debt collectors cannot run afoul of any of the provisions of the FDCPA as long as the consumer does not dispute a debt in writing within the first 30 days. “If a plaintiff does not dispute a debt in writing, then the debt collector may continue to pursue payment for the debt without violating the provisions of the Act” (emphasis added). (*Def. Resp.*, 2.) This proposition is wrong and grossly misleading. Defendants rely on *Durkin v. Equifax Check Services, Inc.*, 406 F.3d 410 to (mis)state that an “in-writing requirement” exists to dispute a debt under the FDCPA.³ (*Def. Resp.*, 2).⁴

A case which best describes the inherent problems with Defendants’ position is *Gigli v. Palisades Collection, LLC*, 3: 06-cv-1428 (M.D. Pa. August 14, 2008) (A copy is attached hereto as Exhibit 1.) *Gigli* distinguishes the case of *Richmond v. Higgins*, 435 F.3d 825 (8th Cir. 2006), cited by Defendants.⁵ *Gigli* presents the precise argument

² “Whether the FDCPA requires that a dispute by a consumer concerning the subject indebtedness must be made in writing has not yet been resolved in this circuit. Other circuits have addressed the issue, but they have reached opposite conclusions. The Third Circuit in *Graziano v. Harrison*, 950 F.2d 107, 112 (3d Cir. 1991), held that a writing requirement must be read into the statutory scheme, while the Ninth Circuit in *Camacho v. Bridgeport Fin., Inc.*, 430 F.3d 1078, 1082 (9th Cir. 2005), reasoned that courts must give effect to the plain meaning of the statute and where there is no explicit requirement in the statute for the dispute to be made in writing, a collection notice that requires any dispute to be written does not comply with 15 U.S.C. § 1692g.” *Turner v. Shenandoah Legal Group, P.C. et al.*, No. 3:06-cv-045 (E.D. Va. June 12, 2006).

³ Accepting this argument would render the jurisprudence surrounding the credit reporting prohibitions of § 1692e(8) in error. *Brady v. Credit Recovery Co.*, 160 F.3d 64 (1st Cir. 1998).

⁴ *Durkin* does not stand for such a proposition. The holding in *Durkin* pertains to overshadowing the consumers’ rights in collection letters and has no application to the instant case.

⁵ *Richmond* is not applicable because Mrs. Russell paid the debt within 30 days and disputed the debt as being paid after she received further collection letters. In contrast, “In the year and five months between the date that Albright was first informed of the debt amount, in early November of 2001, until he first disputed the debt amount on April 1, 2003, the debt amount never changed. Richmond has never alleged that he was billed for services that were not provided or that he was overcharged for the services he received. The conduct that Richmond alleges violated the FDCPA was Higgins’s attempt to collect a previously undisputed debt amount.” *Richmond v. Higgins*, 435 F.3d 825, 829 (8th Cir. 2008) (emphasis added). Here, Mrs. Russell continuously informed Defendants that the debt was paid and that she owed nothing, i.e. she disputed the amount owed from the moment she paid it within the first 30 days.

advanced by Defendants in this case and refutes it. “[T]he failure to dispute a debt within thirty days ‘merely allows the debt collector to proceed under a ‘temporary fiction’ that the debt stated in the validation notice is true’ ... when the debt collector proceeds under the ‘temporary fiction’ that the debt is valid, the debt collector must still refrain from utilizing abusive debt collection practices.” (*Gigli v. Palisades Collection LLC*, at *21, internal quotations and citations omitted.)

The *Gigli* court then noted that “[A]ny debt collector who fails to comply with any provision of [the FDCPA] with respect to any person is liable to such person.” § 1692k(a), further noting that a “contrary result would subvert the FDCPA’s salutary purpose of eliminating abusive debt collection practices ... immunizing unscrupulous debt collectors, while depriving consumers of a remedy would frustrate the FDCPA.” *Id* at *22.

Similarly, this Court should find that Defendants have violated the FDCPA by attempting to collect on a paid account and threatening to report false credit information. To find otherwise would frustrate the remedial purposes of the FDCPA and run counter to congressional intent and established case law.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court review the Recommendation and, pursuant to Rule 72(b) reject the recommended disposition to find (1) Defendants violated the FDCPA; (2) hold Plaintiff is entitled to judgment as a matter of law, granting her Motion for Partial Summary Judgment; and (3) deny Defendants’ post hoc request for summary judgment.

Respectfully submitted this the 12th day of November, 2010,

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**THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
ROCKINGHAM DIVISION
No. 1: 09-cv-515-WWO-WD**

DIANE RUSSELL)
Plaintiff,)
)
vs.)
)
ABSOLUTE COLLECTION SERVICE;)
and CHARLTON CLARKSON,)
<u>Defendants.</u>)

CERTIFICATE OF SERVICE

This is to certify that I have this day electronically filed the foregoing **Plaintiff's Reply in Opposition to Memorandum Opinion and Recommendation** with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to Counsel for Defendants Absolute Collection Service, Inc., and Charlton Clarkson:

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